Roman law

Roman law refers to the legal system that originated in ancient Rome and that later became the basis of law in Western Europe and in countries influenced by European legal codes.

Origins

Roman law had its origins, long before there was a Roman state, in family customs handed down from one generation to another and in judgments (leges regiae) of chieftains or kings. By the time of the establishment of the Roman Republic (509 BC) a considerable amount of this customary law existed. It was not written but oral law, however, in the keeping of the most ancient patrician families (gentes), and this meant that the common people (plebeians) were at a disadvantage in disputes. Years of agitation ended with the appointment of a commission (decemviri legibus scribundis, or twelve legal experts) that collected and published the oral customs in Rome's first codification, The Twelve Tables (451-450 BC). These dealt mainly with problems related to property and to the procedures for obtaining redress for wrongs.

The Twelve Tables were enacted as statutes by one of the Roman governmental assemblies (the COMITIA CENTURIATA), and occasionally thereafter statutes were enacted by other legislative bodies. But the great expansion of law under the republic came from two other sources: jurisconsults and praetors. The jurisconsults were prominent citizens who found the study and interpretation of the law a satisfying and respected pursuit. Since early statutes coincided with the very beginning of writing in Rome, the language was sparing and often needed elaboration. The jurisconsults had great prestige, and they were regularly consulted by officials and laymen alike. Indeed, with the establishment of the principate (27 BC) the first emperor, Augustus, gave certain jurisconsults the authority to issue responses to legal queries as though he himself had been asked, a practice that continued under later emperors.

The praetors were annually elected magistrates whose duties included the administration of the law courts. They too were faced with uncertainties or omissions in statutory law, and thus each made it a practice to publish before entering office an edict that stated under what circumstances he would grant a suit. This edict was good only for his year of office, but successors regularly consulted the previous edict and kept of it what had proved equitable and popular, discarding portions that had been less so. By this method a vast amount of practical and equitable law accumulated, introduced experimentally and tested on the increasingly complicated problems of an expanding commercial state. As the powers of the emperors and bureaucratic officials increased and those of elected officials declined, however, praetors showed less initiative; in the early 2d century AD, Emperor Hadrian had praetorian edicts drawn up by a jurist and codified. This standardized edict then became the subject of study and commentary by jurists, whose writing furnished much of later Roman law.

The emperor, as a magistrate, also had the right to issue edicts on legal affairs. But unlike that of the republican magistrates his power was lifelong, so that his edicts were effective for a considerable time. Further, succeeding emperors usually observed the enactments of their predecessors. The emperors depended a good deal on the advice of eminent jurists and, especially in the early principate, asked for the concurrence of the Senate, a body of elder statesmen who advised the magistrates. The concurrence of the Senate eventually became a matter of course; enactments by the emperors became the only source of law. Under the authority of the Eastern Roman (Byzantine) emperor JUSTINIAN I, select committees directed by the jurist Tribonian collected, edited, and organized (AD 528-34) the scattered and sometimes contradictory legal materials from all these sources and pu blished them as the Corpus Juris Civilis (Body of Civil Law), which is the form in which most Roman law has come down to us (see JUSTINIAN's CODE).

Traditionally, the study of Roman law is divided into five parts: the laws of persons, of property, of succession, of obligations, and of actions.

The Law of Persons

In early Roman law it was especially important to establish one's status--free or slave, citizen or alien, male or female, parent or child, and so on--because only then could legal rights and duties be determined. At first it was status in respect to the family that was most important. But as Roman jurists came into contact with other cultures or fell under the influence of Greek philosophy status based on birth gave way in importance to contractual relations. The Romans also created the juristic person or corporation, a fictitious person endowed by the state with the rights of natural persons.

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The Law of Property

Property law defined what items could and could not be owned by individuals, described the methods of acquisition and transfer that the legal system would recognize and defend, and noted the extent to which one person's rights in property might be modified or limited by the claims of another individual.

The Law of Succession

The law of succession treated, in cases of intestacy, the passage of property to heirs whose rights depended on their relationship to the deceased. It also regulated the making of wills. As the Roman sense of equity and humanity developed, the right of a testator completely to disregard natural heirs was severely limited.

The Law of Obligations

The law of obligations concerned the rights and duties that rose from commercial pursuits or contracts and also from a number of illegal acts--torts or delicts--which obliged the offender to recompense the injured person.

The Law of Actions

The law of actions contained the procedures to be followed in disputes. It evolved from a considerable dependence on self-help by the plaintiff in the earliest days to an almost complete dependence, from summons to execution, on the state.

Influence of Roman Law

By the time of Justinian most of Western Europe was in the hands of barbarian kings who administered a mixture of their own GERMANIC LAW and earlier Roman law. But in the 11th century Italian scholars rediscovered and began to study and teach the Corpus Juris Civilis. This happened at the very time that expanding trade and commercial activity made the law of a universal state more appropriate than any other. Thus Roman law became the basis of the law of all Western Europe, with the exception of England (see CIVIL LAW; COMMON LAW). It spread to the New World and is basic in South and Central America, Louisiana, and Quebec; it was adopted in South Africa and Sri Lanka and plays a role in the codes of emerging states. Through Byzantium it reached Russia, where it still furnishes part of the law. The Roman jus gentium (law of the peoples), developed in the republic to govern relations with non-Romans, became the basis of much of modern commercial law.

Frank Bourne

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